

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-HC-2163-D

LARRY FRANKIE JOHNSON,)
Petitioner,)
v.)
DEE SMITH, Warden,)
Respondent.)

ORDER

On September 5, 2017, Larry Frankie Johnson (“Johnson” or “petitioner”), proceeding pro se, petitioned for a writ of habeas corpus under 28 U.S.C. § 2241. Johnson contends that under United States v. Mathis, 136 S. Ct. 2243 (2016), he is no longer a career offender and that he should be resentenced [D.E. 1]. On October 7, 2018, Dee Smith (“Smith” or “defendant”) moved to dismiss for lack of jurisdiction [D.E. 7] and filed a supporting memorandum [D.E. 8]. On November 9, 2018, Johnson responded in opposition [D.E. 10]. On November 9, 2018, the court referred the motion to dismiss to United States Magistrate Judge Numbers for a memorandum and recommendation (“M&R”). On May 28, 2019, Judge Numbers issued a M&R and recommended that the court grant defendant’s motion to dismiss [D.E. 12]. On June 14, 2019, Johnson objected to the M&R [D.E. 13].

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy

itself that there is no clear error on the face of the record in order to accept the recommendation.”

Diamond, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R, the record, and Johnson’s objections. As for those portions of the M&R to which Johnson made no objection, the court is satisfied that there is no clear error on the face of the record. As for the objections, the court has reviewed de novo the objections and the M&R. Johnson’s objections repeat the arguments Johnson made to Magistrate Judge Numbers. Compare [D.E. 13] 1–3, with [D.E. 10] 1–7. The court overrules Johnson’s objections. See United States v. Foote, 784 F.3d 931, 935–44 (4th Cir. 2015). To the extent that Johnson has raised other objections, the court has considered them and overrules them as meritless.

In sum, the court ADOPTS the conclusions in the M&R [D.E. 12], GRANTS Smith’s motion to dismiss [D.E. 7], and DISMISSES Johnson’s petition for lack of jurisdiction. The clerk shall close the case.

SO ORDERED. This 11 day of September 2019.


JAMES C. DEVER III
United States District Judge